THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.8704 of 2006

19.7.2006

Between:
Yesaiah, S/o.Ismalaiah
And others

... Petitioners

AND
The Mandal Revenue Officer,
Zaheerabad Mandal, Medak District
And others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.8704 of 2006

ORDER:

The petitioners challenged the proceedings dated 16.6.2004 issued by the Revenue Divisional Officer, Sangareddy Division (RDO), the second respondent herein, whereby and whereunder the assignment made in favour of thirty nine (39) persons including the petitioners herein in respect of land admeasuring Acs.55.03 guntas in survey No.337 situated at Zaheerabad (hereafter called, the subject land) is cancelled and the Mandal Revenue Officer, Zaheerabad (MRO), the first respondent herein, was directed to resume the land in favour of the Government. The petitioners seek a further direction cancelling the lease of the land to fifth respondent vide G.O.Ms.No.1020, dated 13.12.2004 and G.O.Ms.No.23, dated 10.1.2006.

The fact of the matter is as follows. The subject land was declared as surplus agricultural land under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereafter called, the Act). The then Tahsildar, Zaheerabad assigned the land to as many as thirty nine (39) persons in an extent of Acs.1.44 guntas each by proceedings dated 06.1.1981 for agricultural purpose. The petitioners allege that as required under the provisions of the Act and A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (hereafter called, the Rules), the petitioners paid requisite amount, obtained possession and subsequently petitioner Nos.1, 3, 4 to 7, 9 and 10 obtained pattadar passbooks. The petitioners were in possession of the property, but the second respondent issued the impugned proceedings directing the MRO to resume the land to the Government. The petitioners further allege that the fifth respondent to whom A.P. Industrial Infrastructure Corporation (APIIC) allotted Acs.112.00 of land in survey No.325 in 1996 is behind the impugned proceedings. It is also alleged that the Government of Andhra Pradesh issued orders in G.O.Ms.No.1020, dated 13.12.2004 allotting the subject land and the lease period was extended subsequently by G.O.Ms.No.23, dated 10.1.2006. The respondents, the petitioners allege, cancelled the allotment in their favour, only at the behest of the fifth respondent in an arbitrary manner

without following due process of law.

The writ petition is filed assailing the proceedings issued way back on 13.12.2004. Therefore this Court directed the learned Assistant Government Pleader for Revenue (Assignment) to get instructions in the matter and also to file counter affidavit, having regard to the submission that the petitioners were not given any notice before the cancellation of assignment. The MRO has filed counter affidavit with all necessary documents. While denying the petition allegations, the MRO admits the allotment of lands to the petitioners. It is stated that as per the assignment conditions, the assignees are required to bring the land under cultivation within three years from the date of assignment, but they failed to cultivate the land since 1981. Therefore show cause notices were issued to all the assignees on 23.3.2004 to explain as to why assignment should not be cancelled, and thirty three (33) of them submitted a joint representation alleging that they are cultivating the land regularly. On 28.4.2004, a memo was issued to them to submit necessary evidence like copies of pahanies and other documents in support of their claim. They did not submit any evidence and, therefore, the RDO cancelled the assignment under subsection (5) of Section 14 of the Act. It is also stated that the land was resumed under a cover of panchanama dated 02.7.2004 duly changing the entries in the revenue records as “Kharij Khata”. The Government also issued orders leasing out the land to APIIC vide G.O.Ms.No.1484 dated 15.11.1977, who in turn sublet the land to fifth respondent for a period of five years from 2005. All other allegations made by the petitioners are denied.

Learned Counsel for the petitioners denies the allegation that the petitioners did not cultivate the land and he relied on the pahanies, in support of his contention. Secondly, he would urge that the cancellation was effected by the RDO without giving any notice and, therefore, they are unsustainable.

A perusal of the documents filed by the petitioners and the respondents would show that cancellation was effected in December 2004 and land was also resumed. The petitioners did not explain the delay on their part in approaching this Court after lapse of a year and half. They only contend that there was no notice to the petitioners and, therefore, they were not aware of the proceedings. This aspect of the matter is belied by abundant documentary evidence produced by the respondents including a show cause notice issued to the petitioners. A perusal of the Xerox copies of the show cause notices would show that the show cause notice is duly served on the petitioners. The

petitioners along with others submitted explanation claiming cultivation. Thereafter, a memo was issued to them to produce evidence and as they did not produce evidence, the impugned order was passed. Taking these two aspects into consideration, it becomes clear that the petitioners are guilty of delay and laches and the writ petition cannot be entertained at this stage. Indeed the petitioners have not filed any reply affidavit denying the counter averments though at the request of the learned Counsel for the petitioners he was permitted to peruse the original record produced by the learned Assistant Government Pleader.

The assignment was cancelled by the RDO on the ground that the petitioners failed to comply with the conditions of assignment. In this connection, a reference may be made to subsections (4) and (5) of Section 14 of the Act, which read as under.

14. Disposal of land vested in Government:-

(4) Any transfer of the land under this section shall be subject to –

(i) the condition that the land shall not be alienated by the transferee by way of sale, gift, mortgage, lease orin any manner whatsoever otherwise than by way of mortgage in favour of the Government, a bank or a co-operative Society, including a land mortgage bank; and

(ii) the condition that where the land transferred is an orchard, the transferee shall continue to maintain such land as an orchard; and

(iii) such other condition as may be prescribed.

(5) Any alienation effected or other act done in respect of any land in violation of the conditions specified in sub-section (4) shall be null and void; and the Revenue Divisional Officer shall resume the land after giving an opportunity to the persons affected of making a representation in this behalf.

A reference may also be made to clause (f) of subrule (4) and subrules (5) and (6) of Rule 10 of the Rules, which read as under.

10. Disposal of lands vested in the Government:-

(4) The allotment or transfer of lands shall be made by the Tahsildar concerned subject to the following conditions, namely:-

(f) Where the land is transferred for purposes of agriculture or for purposes ancillary thereto, the land shall be cultivated personally by the transferee or any of the members of his family or by hired labour under the supervision and control of himself or any member of his family.

(5) Where any person fails to pay the instalment due or violates any of the conditions of allotment or transfer, the Revenue Divisional Officer, may after giving an opportunity to

the person concerned of making a representation in this behalf within thirty days from the date of communication of a notice, pass an order forfeiting the amount already paid and resuming the land and also authorize any officers not below the rank of a Revenue Inspector to take possession of the land;

Provided that no such land shall be taken possession of until the seasonal crop on the ground is harvested.

(6) Against every order of forfeiture of the amount or resumption of the land passed by the Revenue Divisional Officer, an appeal shall lie to the District Collector within thirty days from the date of the communication of the order.

Reading the provisions of Section 14(4) and (5) of the Act and Rule 10 (4)(f), (5) and (6) of the Rules would show that while allotting/ assigning the land, the MRO can impose conditions including a condition that the land shall be used for the purpose of agriculture and that it shall be cultivated personally by the transferee. If the conditions of such transfer are violated, the allotment itself is deemed to be null and void under Section 14(5) of the Act. Further, when the conditions of allotment are violated, it is competent for the RDO to resume the land after giving a notice to the person concerned for making representation. If any order is passed by the RDO resuming the land, an appeal is provided under Rule 10(6) of the Rules to the District Collector. In this case, the petitioners did not cultivate the land and, therefore, after issuing show cause notice, the RDO cancelled the allotment and ordered resumption. Indeed as disclosed in the counter affidavit, the land was taken possession by the MRO on 02.7.2004.

The writ petition is misconceived and is, accordingly, dismissed. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

July 19 , 2006.
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Note: Issue Order copy in one week.

By order
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